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**NO. 84934**

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**IN THE SUPREME COURT OF MISSOURI**

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**STATE OF MISSOURI, ex rel.**
**JUDITH WOOD**,

Relator,

vs.

**JENNIFER MILLER**, Supt.
Chillicothe Correctional Center,

Respondent.

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# RESPONDENT=S STATEMENT, BRIEF AND ARGUMENT

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**JEREMIAH W. (JAY) NIXON**
Attorney General

**MICHAEL J. SPILLANE**
Assistant Attorney General
Missouri Bar No. 40704
Post Office Box 899
Jefferson City, MO 65102-0899
(573) 751-3321
FAX: (573) 751-3825
***Attorneys for Respondents***

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## JURISDICTIONAL STATEMENT

This case is an original action in habeas corpus challenging a judgment of conviction and sentence for second degree murder from the Circuit Court of Barton County, Missouri. Relator Judith Wood is confined in the Chillicothe Correctional Center in Livingston County, Missouri. Respondent Jennifer Miller is the superintendent of that facility.

Because Relator has already unsuccessfully sought habeas corpus relief in the Circuit Court of Livingston County and the Missouri Court of Appeals, Western District, this is the proper court to seek a writ of habeas corpus. Missouri Supreme Court Rules 84.24, 91.02.

## STATEMENT OF FACTS

On May 14, 1996, the first degree murder case of ***State of Missouri v. Judith Wood***, was sent from McDonald County to Barton County on a change of venue (Respondent=s Appendix A4). On August 6, 1996, the defense filed a motion to suppress and a motion to suppress statements. *Id*. On September 9, 1996, an evidentiary hearing was held on the motion to suppress and the motion to suppress statements. Following the hearing the trial court overruled the motions finding that Wood gave a valid Miranda waiver and valid consent to the search of her residence. *Id.* The court set the case for trial on December 18, 1996. However, on December 12, 1996, the case was reset for a guilty plea and sentencing hearing on January 28, 1997. *Id*.

On that date the state put forward as a factual basis for the plea that the victim Cathy Undernehr had been found dead on December 7th, that she was killed by gun fire, that the bullets in the victim matched a gun found in Wood=s home, that Wood confessed to officers shooting the victim until she ran out of bullets and Wood was overheard admitting the shooting to family members (G.P. Tr. 7).

Wood testified that she had not received any threats or promises in exchange for her plea and that she knew that the range of punishment was ten to thirty years or life (Tr. 8).

However, when the prosecutor stated that the state=s recommendation would be life imprisonment, Wood twice indicated this was not what she had expected (G.P. Tr. 9-10). When the court inquired, Wood reversed herself and twice said that the state=s recommendation had been explained to her and that she guessed that she did expect the recommendation of a life

sentence (G.P. Tr. 10). Finally, she unequivocally admitted she expected the recommendation stating Ayes sir@ when the court asked if it had been her understanding that the state would recommend a life sentence (G.P. Tr. 11).

Wood testified that her attorney had done everything she had asked him to do in preparing for the case, that she was satisfied with his services and he had not done anything she asked him not to do (G.P. Tr. 12).

Wood asked to make a statement after the plea was accepted (G.P. Tr. 13). She denied responsibility for the crime but stated she accepted the plea in order not to die in prison for something she Adidn=t do@ (G.P. Tr. 14). Wood then attacked her confession as being the result of intoxication and implied that someone had planted the murder weapon, alleging that it was found two hours after the initial search in a location that had already been searched (G.P. Tr. 14-15).

Prior to Wood=s guilty plea, the court specifically told her that Athere is no appeal for a guilty plea@ and that Ayou can=t file and ask the Court of Appeals to overturn this B the sentence and plea you understand that@ (G.P. Tr. 6). Wood testified that she understood. *Id*.

Following the plea, the court sentenced Wood to life in prison (G.P. Tr. 17). After the plea and sentence, plea counsel stated he was entering notice he intended an appeal of the suppression motion (G.P. Tr. 17). After this, the court informed Wood that she had ninety days after delivery to the Department of Corrections to file a Rule 24.035 motion for post-conviction motion (G.P. Tr. 19).

After sentence, Wood reiterated her satisfaction with counsel and that he had done everything he was asked to do (G.P. Tr. 20-21). She also affirmed that she had received no promise or offer other than the plea bargain (G.P. Tr. 20). The court found no probable cause to find counsel had been ineffective (G.P. Tr. 21).

Wood alleges that she filed an untimely Rule 24.035 motion that was denied as untimely but does not allege that she timely appealed the denial of that motion (Relator=s Brief 10).[1]

Wood filed unsuccessful petitions for habeas in the Circuit Court of Livingston County, Missouri and the Missouri Court of Appeals, Western District. Wood now seeks relief from her conviction and sentence in an original habeas corpus action in this Court.

[1]Review of case net reveals that Judith Wood filed a post-conviction relief motion in ***Judith Wood v. State of Missouri***, 99 CV672274 on July 12, 1999 and this was dismissed on August 2, 1999.

## ARGUMENT

## I.

**Relator is not entitled to merits review of her defaulted claims of ineffective assistance of guilty plea counsel because she has not demonstrated cause and actual prejudice or new reliable evidence of actual innocence that would excuse the default of the claims.**

Wood does not contest that she filed an untimely Rule 24.035 motion defaulting the claims raised in this petition. Rather Wood seeks to excuse her default through either the cause and actual prejudice gateway to habeas review or the actual innocence gateway to habeas review. Analysis reveals that Wood=s case does not meet the applicable tests to pass through either gateway to review.

### Actual Innocence Gateway Analysis

Relator Wood claims that her ineffective assistance of trial counsel claims should be reviewed based on the actual innocence gateway to review. Her argument is that if her counsel had done a better investigation and found unspecified evidence of innocence and had prevailed at the suppression hearing having her confession and the murder weapon found in her home suppressed, then it is more likely than not that no reasonable juror would have been convicted (Relator=s Brief 21-22). This analysis has little in common with the type Aactual innocence@ analysis actually used by courts in determining whether a defaulted claim may be reviewed through habeas corpus.

The standard for actual innocence review of a defaulted claim in federal habeas corpus is set out in ***Schlup v. Delo***, 513 U.S. 298, 327 (1994). In order to pass through this gateway a petitioner must present new evidence in light of which it is more likely than not that no reasonable juror would have been convicted. *Id*. at 327. Actual innocence analysis involves analysis of all the evidence including that alleged to have been illegally admitted, that alleged to have been wrongly excluded and that which has been newly discovered. *Id*. at 327-328. Actual innocence analysis focuses on new reliable evidence of factual not legal innocence such as credible declarations of guilt by another, trustworthy eyewitness accounts and exculpatory scientific evidence. ***Pitts v. Norris***, 85 F.3d 348, 350-351 (8th Cir. 1996). ANew evidence@ in this context means evidence the factual basis of which could not previously have been discovered through due diligence. ***Meadows v. Delo***, 99 F.3d 280, 282 (8th Cir. 1996). In ***Clay v. Dormire***, 37 S.W.3d 214, 217-218 (Mo.banc 2000), this Court adopted federal actual innocence analysis for reviewing defaulted claims in habeas corpus. ***State ex rel. Nixon v. Jaynes***, 63 S.W.3d 210, 215 (Mo.banc 2001) (stating AThis Court in ***Clay v. Dormire*** adopted the federal standard for manifest injustice. . . .@).

In this case Wood presents no Anew@ evidence and her claim has nothing to do with factual innocence. Her argument is essentially that evidence tending to establish her guilt such as the murder weapon found in her home and her confession should not be considered. The analysis set out in ***Schlup*** is consideration of whether newly discovered evidence proves factual innocence when considered in light of all the evidence including that alleged to have been

illegally admitted. Wood=s claim has nothing to do with the analysis set out by the United States Supreme Court in ***Schlup*** and adopted by this Court in ***Clay***.

Wood also appears to allege that had counsel discovered some as yet undiscovered and unspecified evidence her innocence would have been proved. Allegations of undiscovered evidence of innocence, without the evidence itself, neither entitle a petitioner to gateway review or an evidentiary hearing to prove the allegations. The actual innocence exception exists to review newly discovered evidence not as a forum to discover and develop such evidence. *See* ***Weeks v. Bowersox***, 119 F.3d 1342, 1351-1355 (8th Cir. 1997) (en banc) (Noting that waiving a default based on allegations that evidence proving innocence exists would make a mockery of finality, comity and judicial economy and creating an entitlement to hearing to develop such evidence has no support in the law or common sense).

**Cause and Prejudice**

Wood alleges that she has cause to excuse her default of her ineffective assistance of guilty plea counsel claims because she was allegedly waiting for guilty plea counsel to file a direct appeal based on the denial of the motion to suppress evidence (Relator=s Brief 19).

In ***Brown v. State***, 66 S.W.3d 721, 731 (Mo.banc 2002), this Court adopted Acause and actual prejudice@ gateway to habeas review used by the federal courts. Cause to excuse a default occurs if some factor external to the defense impeded efforts to file the claim such as the factual or legal basis of a claim being not reasonably available or interference by state officials making compliance with the proper procedural rules for presenting a claim impracticable.

***Murray v. Carrier***, 477 U.S. 478, 488 (1986). Actual prejudice results if the underlying error worked to the actual and substantial disadvantage of the party. ***Brown v. State***, 66 S.W.3d at 731.

There is no allegation in this case that the factual and legal basis of Wood=s substantive ineffective assistance of counsel claims was not discoverable in time to raise these claims in a Rule 24.035 motion. Wood=s claims about lack of understanding of the plea agreement, inadequate investigation and inadequate performance in the suppression hearing were all available at the time of sentencing. Similarly, the sentencing court specifically advised Wood that a Rule 24.035 motion had to be filed within ninety days of delivery to the Department of Corrections (G.P. Tr. 19). It also advised her that there was no appeal from a guilty plea (G.P. Tr. 6).

Nevertheless Wood=s claim of cause to excuse her default is that she was waiting for guilty plea counsel to file a direct appeal of the denial of the motion to suppress. This is essentially a claim that counsel=s misunderstanding caused her to file a late Rule 24.035 motion. As a matter of law counsel=s alleged mistakes in the collateral review process cannot be cause to excuse a default. *See* ***Sweet v. Delo***, 125 F.3d 1144, 1151 (8th Cir. 1997). *See also* ***Duvall v. Purkett***, 15 F.3d 745, 748 (8th Cir. 1994) (Inmate allegedly inadequately informed about parole ineligibility by guilty plea counsel did not have cause to excuse his default as he could have read the relevant statute himself or consulted a post-conviction attorney and then filed a Rule 24.035 motion). Wood is alleging bad advice by counsel in the collateral review process as cause to excuse the default of a Rule 24.035 motion. This she may not do.

Direct appeal of a guilty plea is limited to the subject matter jurisdiction of the plea court and the sufficiency of the information or indictment. ***State v. Sharp***, 39 S.W.3d 70, 72 (Mo.App., E.D. 2001), *citing* ***State v. Page***, 536 S.W.2d 834, 835 (Mo.App., W.D. 1976); *see also* ***State v. Carter***, 62 S.W.2d 569, 570 (Mo.App., S.D. 2001). Therefore no appeal of suppression hearing issues would have been cognizable had an appeal been filed. Such issues are as a matter of law waived by the plea itself. Wood is ultimately arguing that based on misinformation from guilty plea counsel she misunderstood the law on this point. Under ***Duvall*** such a legal misunderstanding does not excuse a default of post-conviction collateral remedies. Missouri courts have similarly rejected the idea that lack of legal knowledge could excuse the failure to raise a claim in an initial post-conviction relief motion and permit the filing of a successive motion.[2] *See* ***Brown v. State***, 674 S.W.2d 578, 599 (Mo.App., E.D. 1984) (Movant who knew he was not represented by counsel at juvenile hearing could not file successive motion on the theory that he did not understand the legal significance of this). ***Burnside v.***

[2]A Rule 91 habeas corpus petition is a motion for collateral relief that can, in rare cases, be used like a successive motion, under the old colalteral review rule, Missouri Supreme Court Rule 27.26. Therefore, it is noteworthy that the allegation of cause would have failed even under old precedents such as ***Brown*** and ***Burnside*** interpreting Missouri Supreme Court Rule 27.26 (repealed) which is arguably a broader gateway than cause and prejudice analysis.

***State***, 600 S.W.2d 157, 158-159 (Mo.App., W.D. 1980) (Movant could not raise double jeopardy claim in successive motion for collateral review in that he knew of both convictions alleged to constitute double jeopardy at the time of his first motion and lack of legal knowledge on the part of himself or his attorney could not excuse the failure to raise the claim).

The analysis that Wood has not made an allegation of cause that would excuse her default is entirely consistent with Missouri state precedent on cause and prejudice analysis as well as the federal precedent and precedents dealing with claims under Missouri Supreme Court Rule 27.26 (cited above). Although recent Missouri precedents have discussed cause and prejudice analysis, none have found a fact pattern similar to Wood's to be able to pass through the gateway to review. ***State ex rel. Meier v. Stubblefield***, slip op. No. 84587 (January 28, 2003) (2003 Mo. Lexis 15) was a case in which the trial judge misinformed a defendant after a jury trial that he had ninety days to file a direct appeal and counsel did not file a motion to proceed *in forma pauperis* on appeal for forty days and never informed the client that he had actually never filed an appeal. In ***Meier***, the relator was denied a direct appeal by the actions of the state through the trial judge and the actions of counsel, and the actions of the trial judge had the effect of preventing collateral review. That is counsel was constitutionally ineffective in not filing a notice of appeal and the state through the trial judge prevented a timely Rule 29.15 motion. ***State ex rel. Hahn v. Stubblefield***, 996 S.W.2d 103 (Mo.App., E.D. 1999) was a case in which a relator was convicted after a jury trial and then immediately abandoned by counsel who did not attend sentencing or file a notice of direct appeal. Again, counsel was constitutionally

ineffective. In ***Reuscher v. State***, 887 S.W.2d 588, 591 (Mo.banc 1994), this Court in dicta noted that federal habeas courts use cause and prejudice analysis that provides broader habeas review than was then available in state habeas and that it was arguable whether this Court should adopt the same standard. ***Reuscher*** was a case that involved alleged failure to disclose by the state which could have provided cause to excuse a default in a subsequent habeas action. *Id*. at 590. ***Reuscher*** does not stand for the proposition that trial counsel can be blamed for the failure to file a timely Rule 29.15 motion and this Court was in fact critical of this idea in ***Reuscher*** stating "Nothing in Rule 29.15 compels a movant to wait until the transcript on appeal is filed to seek relief. If he had complaints about Mr. Duncan's representation, movant could have filed his motion for post-conviction relief at any time after his conviction and sentence." *Id*. at 590.

Wood cites no state or federal precedent that stands for the proposition that failure to file a Rule 24.035 motion in a timely manner may be excused by an erroneous belief that guilty plea counsel would take a futile direct appeal from a guilty plea on noncognizable issues. This is in fact a novel assertion that goes beyond what has been held to be cause that may excuse a default in federal or state court. Wood's analysis is unique in that it would find cause based on something that was neither external to the defense nor an act or omission by counsel that was constitutionally ineffective assistance of counsel. Counsel cannot have been ineffective in his role as guilty plea counsel or direct appeal counsel for not filing a facially meritless, and probably frivolous appeal, and as a matter of law counsel's actions in the post-conviction review process cannot excuse a default, as there is no right to effective assistance of post-conviction

counsel under state or federal law. *See* ***Coleman v. Thompson***, 501 U.S. 722, 754-755 (1991) (Noting that ineffective assistance of counsel can be cause to excuse a default only if counsel=s actions constituted a Sixth Amendment violation in a proceeding in which there is a constitutional right to counsel and it is the petitioner who must bear the burden of complying with procedural rules in other proceedings despite counsel=s alleged acts or omissions interfering with compliance).

In this case counsel was not constitutionally ineffective in not filing a meritless appeal. His act or omission in not filing this appeal cannot provide cause to excuse a default in a proceeding in which there is no constitutional right to counsel, a Rule 24.035 proceeding, which is the only proceeding in which the alleged omission is alleged to have caused prejudice.

As will be discussed below the substantive claims are meritless. In order to show actual prejudice Wood would needs to demonstrate not only that her substantive claims had merit but that the errors complained of worked to her actual and substantially disadvantage infecting the entire proceeding with error of constitutional dimensions. ***United States v. Frady***, 456 U.S. 152, 170 (1982). Though it is not necessary to reach this level of analysis because cause to excuse the default has not been shown, the gateway claim also fails on the actual prejudice prong of the analysis.

## II.

**Relator=s claim that guilty plea counsel was ineffective because Relator did not comprehend the plea agreement is refuted by the record.**

Wood alleges that counsel told her she would be sentenced to thirteen to fifteen years in prison and that she would serve no more than seven (Relator=s Brief 22).

Under questioning by the guilty plea court, Wood admitted at the guilty plea hearing that she had expected the state=s recommendation under the plea bargain would be a life sentence (G.P. Tr. 10-11). Wood also affirmed after sentence was imposed that she had received no promise or offer other than the plea bargain (G.P. Tr. 21). In an affidavit counsel has asserted that he had told Wood that based on what he had learned from the Division of Probation and Parole she would have to complete fifteen years of her sentence prior to parole eligibility (Appendix A6). In fact, 14 CSR 80-2.010(6) sets a presumptive parole hearing date of 156 months, that is fifteen years for sentences of over forty-five years.[3]

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[3]The Missouri parole statute '217.690, RSMo 2000 gives the parole board Aalmost unlimited discretion@ on whether or when to grant parole release. *See* ***State ex rel. Cavallaro v. Groose***, 908 S.W.2d 133, 135 (Mo.banc 1995). Missouri parole regulations are not meant to and do not limit this discretion but merely serve as an aid to the board and may be followed or not based on the facts of a particular case at the discretion of the board. *See* ***Gettings v. Missouri Department of Corrections***, 950 S.W.2d 7, 4-11 (Mo.App., W.D. 1997)(guideline release dates need not be followed by board); ***Shaw v. Missouri Board of Probation and Parole***, 937 S.W.2d 771, 772 (Mo.App., W.D. 1997)(AThe regulations set

forth in 14 CSR 80-2.010 do not limit the broad scope of discretion given the board by '217.690"). As there is no statutory mandatory minimum term on Wood=s sentence, she could legally be paroled at any time although there is no reason to believe she will be considered before the fifteen years set out in the regulation.

Wood=s argument that she believed she would be sentenced to thirteen to fifteen years= imprisonment and only serve seven prior to parole is refuted by her own testimony at the guilty plea hearing. In order to prevail on an ineffective assistance of counsel claim, Wood must establish both that counsel acted outside the wide range of professional competence and that but for this error there is a reasonable probability she would have gone to trial. *See* ***Hill v. Lockhart***, 474 U.S. 52 (1985). In this case Wood told the court under oath that she had expected a life sentence and that she had received no other promises but the plea bargain. This testimony refutes both prongs of the ***Hill*** test. Wood=s assertions are essentially contradictions of her guilty plea testimony which entitle her to neither relief nor even further inquiry. *See* ***Tran v. Lockhart***, 849 F.2d 1064, 1068 (8th Cir. 1998)(Bare contradictions of testimony at the guilty plea hearing do not entitle a habeas petition to further inquiry); ***Krider v. State***, 44 S.W.3d 850, 857 (Mo.App.,W .D. 2001) (No hearing is required on claims of ineffective assistance of counsel that are refuted by the record). Were Wood=s claim not defaulted, it would necessarily fail as meritless.

## III.

**Relator=s claim that guilty plea counsel was ineffective for allegedly conducting an inadequate investigation is refuted by the record.**

Wood alleges that she told counsel she did not Abelieve@ she was guilty[4] and that she asked counsel to investigate alternate explanations for the victim=s death including blaming the crime on another named individual, but that counsel failed to do this (Relator=s Brief 28). This allegation is explicitly refuted by Wood=s own sworn testimony. Both before and after her plea was accepted, Wood told the court that she was satisfied with counsel and that he had done everything she had asked him to do (Tr. G.P. Tr. 12, 20-21). Wood does not set out a claim under ***Hill v. Lockhart***, 474 U.S. 52 (1985) that is anything more than a bare contradiction of her sworn testimony at the guilty plea. In order to even be entitled a hearing on such a claim, Wood would have had to have alleged facts not conclusions which if true would entitle her to relief, the facts must not be refuted by the record and prejudice must have resulted. ***Krider v. State***, 44 S.W.3d 850, 857 (Mo.App., W.D. 2001). Obviously, Wood does not pass this test as her own sworn testimony refutes her current allegations, and she to this day has not stated what an investigation by counsel specifically would have turned up that was not found and would have

[4]Apparently Wood=s current position is that she does not remember whether or not she is guilty.

caused her to plead not guilty and insist on a trial. In short, the allegation of deficient investigation and resulting prejudice is both conclusory and refuted by the record.

## IV.

**Relator=s claim that counsel was ineffective for allegedly not challenging the warrantless search of her home is refuted by the record.**

Relator allege trial counsel Afailed to file a motion to suppress the evidence seized in the search of Wood=s home@ (Relator=s Brief 34). This claim is refuted by the record. The docket sheet indicates that a motion to suppress was filed and an evidentiary hearing was held and the court found the following: AConsent to search given by Defendant knowingly, willingly, intelligently, and voluntarily. Motion to Suppress is overruled@ (Appendix A4). Clearly counsel cannot have been ineffective to failing to do something he did do. Because the factual basis of the claim is refuted by the record, it should be rejected without further review. *See* ***Krider v. State***, 44 S.W.3d 850, 857 (Mo.App., W.D. 2001). Further, as with the previous claim Wood=s assertions of her satisfaction with counsel refutes the assertion that she pled guilty because of counsel=s failure to act (G.P. Tr. 12, 20-21).

## V.

**Relator=s claim that guilty plea counsel was ineffective for not adequately challenging the admissibility of the Relator=s confession is refuted by the record.**

Wood alleges that guilty plea counsel was ineffective for not calling an expert witness to opine that Wood=s confession was not voluntary (Relator=s Brief 37). Wood=s argument necessarily relies on the premise that counsel had an affirmative duty to hire an expert to opine that her confession was involuntary at the evidentiary hearing on the motion to suppress the confession. Wood cites no case that stands for this proposition.

Contrary to Wood=s assertion, ***Berg v. Moschner***, 260 F.3d 869 (8th Cir. 1991) does not stand for the proposition that such evidence might be necessary in particular cases. Rather in ***Berg***, the Eighth Circuit assumed a duty to present expert evidence Aarguendo@ and denied the claim due to lack of prejudice, which was the most efficient way to deal with the claim. *Id*. at 72. ***State v. Cook***, 67 S.W.3d 718 (Mo.App., S.D. 2002); ***Elliot v. Williams***, 248 F.3d 1204 (106th Cir. 2001); ***Dressler v. McCaughtry***, 238 F.3d 908 (7th Cir. 2001) and ***United States v. Williams***, 12 F.3d 1128 (7th Cir. 1997) are cases in which an appellate court affirmed a trial court that was not persuaded by expert testimony on the issue of voluntariness. Wood is able to cite to no case in which an attorney has ever been found ineffective for not presenting an Aexpert@ opinion on the validity of a confession. It is difficult to argue, as Wood does, that it was objectively unreasonable of counsel and outside the wide range of professional competence

not to present a type of evidence that has to Wood=s knowledge never actually worked at a suppression of confession hearing.

Wood alleges that ***Gennetten v. State***, 96 S.W.3d 143 (Mo.App., W.D. 2003) supports her position (Relator=s Brief 38-39). ***Gennetten*** was a case involving a failure by trial counsel to call an expert witness who was the chief of the burn and trauma unit that treated an alleged child abuse victim and would have testified that the victim=s burns were consistent with an accident as opposed to child abuse. This fact pattern has nothing to do with the claim that counsel was ineffective for not finding and hiring a defense expert to opine that a confession was involuntary.

The guilty plea court was under no duty to accept the opinion of an expert hired to present his opinion on the voluntariness of confession, as opposed to the court=s own opinion based on the facts and circumstances of the confession, and the testimony of Relator and the investigating officers. *See* ***Williams v. Delo***, 82 F.3d 781, 784 (8th Cir. 1996) (A district court was entitled to give more weight to a habeas petitioner=s own statements and actions and not to accept the testimony of expert witnesses alleging a waiver of claims was invalid because the petitioner=s will was allegedly overborne).

Counsel had no duty to retain an expert witness to provide an opinion on the ultimate issue of whether the confession was voluntary. Further, no prejudice has been shown as there is no reason to believe presenting a Ahired gun@ would have changed the guilty plea court=s opinion, and Relator=s own sworn testimony indicates that her plea was not the result of dissatisfaction with counsel (G.P. Tr. 12, 20-21).

## CONCLUSION

The petition for habeas corpus should be denied.

Respectfully submitted,

**JEREMIAH W. (JAY) NIXON**
Attorney General

**MICHAEL J. SPILLANE**
Assistant Attorney General
Missouri Bar No. 40704

Post Office Box 899
Jefferson City, MO 65102-0899
(573) 751-3321
***Attorneys for Respondent***

## CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains _____ words, excluding the cover, signature block, this certification and the appendix, as determined by WordPerfect 9 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of this attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this _____ day of April, 2003, to:

Elizabeth Unger Carlyle
200 S.E. Douglas St., Suite 200
Lee's Summit, Missouri 64063
(816) 525-6540
FAX: (816) 525-1917
***Attorney for Relator***

**JEREMIAH W. (JAY) NIXON**
Attorney General

**MICHAEL J. SPILLANE**
Assistant Attorney General
Missouri Bar No. 40704

Post Office Box 899
Jefferson City, MO 65102-0899
(573) 751-3321
***Attorneys for Respondent***

# APPENDIX

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